

REMARKS

Claims 1-21 are pending in the application.

Claims 1-21 have been rejected.

Claim 1 has been cancelled without prejudice.

Claims 2, 4, 6, 7, 9, 11, 13, 16, 18, 20 and 21 have been amended.

New Claim 22 has been added.

No new subject matter has been added.

1. Claims 1-21 were rejected under 35 U.S.C. 102(b) as being anticipated by Hewitt et al. (U.S. Patent No. 5,796,851) ("Hewitt"). Applicant respectfully traverses these rejections.

For establishing anticipation, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. . . . The identical invention must be shown in as complete detail as is contained in the . . . claim." MPEP § 2131 at p. 2100-73 (Rev. 2, May 2004) (citations omitted).

Hewitt recites "a method . . . for eliminating clicks and pops which may occur during startup of audio operation." (Hewitt 1:7-9). The amplifier used "is preferably a two-state audio amplifier. The first state of the amplifier is a high impedance state which exists prior to power-on and is maintained until the enable signal is asserted." (Hewitt 1:42-50; Claim 1). The enable signal places the amplifier into the second state, which provides "an output audio signal by amplification of the input audio signal" (Hewitt 1: 53-55).

In contrast, Applicant's claimed invention as amended recites, *inter alia*, a "clamping switch at the output of the amplifier to selectively clamp the output of the amplifier to a power return potential at a designated output level of the digital-to-analog converter." (see Claim 6, 18).

Also, Applicant's claimed invention of Claim 11 as amended recites, *inter alia*, "sending digital data for digital-to-analog conversion during a powering up or powering

down of an audio amplifier, which generates an output to an audio load; converting the digital data to drive the audio amplifier; clamping of an output node of the audio amplifier to a power return potential at a designated output level of the converted digital data; and using the converted digital data to control the ramping of the voltage at the output to not exceed a predetermined rate to reduce audio pop and click from being heard at the load during the powering up or powering down of the audio amplifier.” (Claim 11).

The Office Action recites that “[a] clamping switch as claimed is inherent.” (*see* Office Action, p. 3, ¶ 3; p. 4).

But “[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” MPEP § 2112.IV at p. 2100-55 (Rev. 2, May 2004) (citations omitted).

Hewitt is silent as to “a clamping switch” or “clamping of an output node of the audio amplifier to a power return potential.” Hewitt simply recites the use of an “enabling” circuit to turn a two state amplifier on or off. (see Hewitt 1:45-50). There is no basis in fact and/or technical reasoning that has been provided in the Office Action that supports a determination of such elements necessarily flowing from Hewitt.

Applicant respectfully submits that Hewitt does not set forth each and every element as set forth in Applicant’s invention of apparatus Claims 6 and 18, or Applicant’s method Claim 11. In this Applicant requests that the rejection of these independent claims, and the dependent claims that depend directly or indirectly therefrom, be withdrawn.

Applicant also respectfully submits that new Claim 22 and dependent claims 2-5, which have been amended to depend directly or indirectly therefrom, are allowable as written.

2. Conclusion

As a result of the foregoing, Applicant submits that Claims 2-22 are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ksmith@texaspatents.com.

RESPECTFULLY SUBMITTED,



Kevin L. Smith, Reg. No. 38,620
Attorney for Applicant

Garlick Harrison & Markison, LLP
P.O. Box 160727
Austin, Texas 78716-0727

(972) 772-8836/office
(972) 772-5033/facsimile

CERTIFICATE OF MAILING

37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 5, 2005.

Typed or printed name of person signing this certificate:

Diane Hudson

Diane Hudson
(Signature)